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No. 633

Supreme Court of the United States

October Term, 1959

ALBERT SAMUEL WRIGHT,
Petitioner,

vs

THE STATE OF OHIO,
Respondent

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI.

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PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI.

Petitioner prays that this Court grant rehearing of its order of February 23, 1960, denying the Petition for a Writ of Certiorari to The Supreme Court of Ohio, and that a Writ of Certiorari issue to review the judgment of the Supreme Court of Ohio in the above entitled cause as prayed for in the petition for certiorari filed on January 7, 1960.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT.

This Petition for Rehearing is filed under Rule 58 (2) of the Rules of this Court and in accordance with the opinions of this Court in *Schreiber-Schroth Co.* v. *Cleveland Trust Co.*, 305 US 47, 50; *Hickman* v. *Taylor*, 327 US 808, 328 US 876, 329 US 459, and *Brinkhoff-Faris Co.* v. *Hill*, 280 US 604, 550, 281 US 673.

And, in connection with those authorities, gentlemen, consider if you will the remarks of Mr. Chief Justice Vinson before the American Bar Association on September 7, 1949 (St. Louis Daily Record, September 8, 1949, Page 1, quoted in Stern and Gressman, Supreme Court Practice, Second Edition, BNA, Washington, D. C., 1954, at pp: 107-108). So important does petitioner deem the remarks of Mr Chief Justice Vinson that he is setting them forth haec verba:

> "The Supreme Court is not, and never has been, primarily concerned with the correction of errors in lower court decisions. In almost all cases within the Court's appellate jurisdiction, the petitioner has already received one appellate review of his case. The debates in the Constitutional Convention make clear that the purpose of the establishment of one supreme national tribunal was, in the words of John Rutledge of South Carolina 'to secure the national rights and uniformity of judgments'. The function of the Supreme Court is, therefore, to resolve conflicts of opinion on federal questions that have arisen among lower courts, to pass upon questions of wide import under the Constitution, laws, and treaties of the United States, and to exercise supervisory power over lower federal courts. If we took every case in which an interesting legal question is raised, or our prima facie impression is that the decision below is erroneous, we could not fulfill the Constitutional and statutory responsibilities placed upon the court. *To remain effective, the Supreme Court must continue to decide only those cases whose resolution will have immediate importance far beyond the particular facts and parties involved. Those of you whose petitions for certiorari are granted by the Supreme Court will know, therefore, that you are in a sense, prosecuting or defending class actions; that you represent not only your clients, but tremendously important principles, upon which are based the plans, hopes, and aspirations of a great many people throughout the country.*"

Now, gentlemen, by way of background, and this problem requires background as background is the heart of it as will be very shortly developed, consider this: United States Code Annotated contains over 50 volumes; the codes of each of the 50 states contain over 5 volumes each. Add to them the number of pages in each code of ordinances of every city, town, village, hamlet, and metropolitan form of government in this country. To that total add the total of pages that contain all of the various administrative rules, rulings, and regulations. *Now, add them all up and you will find that there are over one million pages of law, ordinances, regulations and rulings in this country, the violation of any which is a crime.* And keeping in mind that the common law with its maxim, "*Actus non facit reum, nisi sit mens rea*" (An act does not make the doer of it guilty, unless the mind be guilty; that is unless the intention be criminal. The intent and the act must both concur to constitute the crime. *Lord Kenyon, C.J., 7 Term 514; Broom Max 306, Black's Law Dictionary, 4th edition, West Publishing Co.,* St. Paul, Minnesota, 1951) is not only our heritage but also the basis of our jurisprudence, and also keeping the total that you have just added in mind, gentlemen, please ask yourselves this question:

When Chief Justice Vinson was making the remarks about the nature of the certiorari jurisdiction that he was making to the American Bar Association and that are quoted here, wasn't he talking as a lawyer to lawyers with something to say?

Now, gentlemen, on the theory that Chief Justice Vinson was speaking as a lawyer to lawyers and had something of practical value to say, and bearing in mind the statistics that you have before you, this is the type of case that he had in mind when he referred to: "class actions" and to

"tremendously important legal principles, upon which are based the plans, hopes, and aspirations of a great many people throughout the country." A person in this country, any person, in a situation in which the intention with which he did an act is at issue and his life, liberty, and/or property depends on the manner in which he shows his intention should be allowed to hunt for evidence that has bearing on the question of his intention.

(Kindly refer back to Page 3 of the Petition for a Writ of Certiorari where the right of the petitioner herein to hunt for such evidence was denied by the trial court.)

If it is the law that a defendant cannot hunt for evidence – and if that is the law it is new law and could stand iteration and re-iteration until it becomes accepted as such – then this Court, following the remarks of Mr. Chief Justice Vinson and considering that denial of certiorari does not always dispose of the particular case before the Court but can cause the same case to come back again (habeas corpus after denial of certiorari being permitted – thus in effect forcing this Court to decide the same case twice, *Brown v. Allen*, 344 US 443), should grant certiorari to settle the issue raised in this case – the right of a defendant to hunt for evidence – that is of the utmost importance to any defendant in any criminal case in any court – state, federal, local, where intent is an essential element of the offense. And certainly this Court can take judicial notice of the fact that the element of intent is an essential element of the great and overwhelming majority of all criminal offenses in this country regardless of the sovereignty that enacts the particular offense in question.

CONCLUSION

For the reasons set forth above and in the Petition for a Writ of Certiorari to the Supreme Court of Ohio, it is respectfully urged that rehearing be granted and that, upon such rehearing, a Writ of Certiorari issue to the Supreme Court of Ohio.

All of which is respectfully submitted by,

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CERTIFICATE OF COUNSEL

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay; and is restricted to grounds specified in Rule 58 (2) of the Rules of this Court.

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